# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr. Appeals Nos.252 and 253 of 2004**

**Judgment reserved on: 21.8.2007**

**Decided on : 12.10.2007**

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**Criminal Appeal No.252 of 2004**

**Deep Ram @ Vinod Kumar** *Vs.* **State of Himachal Pradesh**

**Criminal Appeal No.253 of 2004**

**Reddy Shyamal Rao @ Akash** *Vs.* **State of Himachal Pradesh**

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***Coram:***

**The Hon'ble Mr. Justice Surjit Singh, Judge.**

**The Hon'ble Mr. Justice Surinder Singh, Judge.**

**Whether approved for reporting? Yes**

**For the Appellants : M/s B.R. Kashyap and Ajay Baluja, Advocates (in both the appeals).**

**For respondent(s) : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.**

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**Surjit Singh, Judge**

Both these appeals are directed against the same judgment (of the trial Court), whereby the appellants have been convicted and sentenced as follows:-

1. **Appellant Reddy Shyamal Rao @ Akash (Cr. Appeal No.253 of 2004).**

| Sr.No. | Offence of which punished | Sentence Awarded |
|---|---|---|
| 1 | U/s 302 and U/s 302 read with Section 34 I.P.C. for committing murders of Sandeep Sood and Pushpa Sood | Death Sentence |

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**Whether reporters of the local papers may be allowed to see the judgment?**

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|---|---|---|
| 2. | Under Section 394 I.P.C. read with Section 397 I.PC. | Rigorous imprisonment for 10 years and a fine of Rs.5000/-; in default of payment of fine, rigorous imprisonment for a period of 2 years |
| 3. | Under Section 342 read with Section 34 I.P.C. | Rigorous imprisonment for 2 years. |

**2. <u>Appellant Deep Ram (Cr. Appeal No.252 of 2004)</u>**

| **Sr.No.** | **Offence of which punished** | **Sentence Awarded** |
|---|---|---|
| 1. | Under Section 302 read with section 34 I.P.C. for murder of Sandeep Sood | Life imprisonment and a fine of Rs.5000/- |
| 2. | Under Section 302 read with Section 34 I.P.C. for murder of Pushpa Sood | Life imprisonment and a fine of Rs.5000/-. |
| 3. | Under Section 394 I.P.C. read with Section 397 I.P.C. | Rigorous imprisonment for 10 years and to pay a fine of Rs.5000/-; in default of payment of fine to undergo rigorous imprisonment for 2 years |
| 4. | Under Section 342 read with Section 34 I.P.C. | Imprisonment for 2 years. |

**2.** Prosecution version may be noticed first. There is a double storeyed building by the side of the Cart Road towards Longwood in Shimla Town. The building has a basement also. The basement of the building is occupied by the tenants of deceased Sandeep Sood and his mother Pushpa Sood, also deceased. The ground floor of the building was occupied by Sandeep Sood and his mother Pushpa Sood (both deceased) as their residence. In the first floor of the building, a hotel was run by Sandeep Sood, deceased. The hotel was known as Oaks Land Hotel. Appellant Reddy Shyamal Rao alias Akash (hereinafter referred to as ‘A-1’) was employed as a Manager in the hotel about 20 days, while appellant Deep Ram

(hereinafter referred to as 'A-2') was employed as a cook about 15 days, prior to the occurrence. PW-1 Satish Kumar was employed by deceased Sandeep Sood, both as a domestic help and as a worker in the hotel. Besides, PW-4 Des Raj was also employed as a worker in the hotel. PW-1 Satish Kumar and A-2 (Deep Ram) used to sleep in the kitchen of the hotel while A-1 (Reddy Shyamal Rao alias Akash) and PW-4 used to sleep in the STD booth set up in one of the small sized rooms of the hotel. On the morning of 15.11.2001, PW-1 Satish Kumar, immediately after waking up, went to the residential portion of the building to assist Pushpa Devi deceased in household chores. A-2 was still asleep in the kitchen at that time. Pushpa Devi deceased asked him to collect earthen lamps which had been lighted on the previous night on account of that being Diwali night. After collecting lamps from the kitchen of the hotel, PW-1 Satish Kumar went to the verandah of the hotel to collect the lamps. There he saw A-1 near room No.102 with a "Darat" (scythe) in his hand. His clothes were blood stained. On seeing PW1 Satish Kumar, A-1 proclaimed that he had already finished the owner of the hotel (Sandeep Sood) and was going to kill "*Mataji*" (deceased Pushpa Devi). A-1 then caught hold of PW-1 Satish Kumar, who at that time was only a lad of 16 years, and took him to room No.105 and tied his hands and feet with a telephone wire and shut him in the said room. The door of the room was bolted from outside. PW-1 Satish Kumar managed to free himself by cutting the cable with his teeth and escaped through the window of the toilet attached with that room. He went to PW-2 Gulab Singh, his cousin, who had got him employed at the hotel. Gulab Singh used to work as a coolie at Victory Tunnel, during those days. He apprised PW-2 Gulab Singh of what he had seen and what A-1 had proclaimed, and how he

managed to escape. PW-2 Gulab Singh then took PW-1 Satish Kumar to the bus stand where HC Krishan Chand (PW-7) met them. PW-1 Satish Kumar narrated the incident to him. HC Krishan Chand, in his turn, informed the Sadar Police telephonically. Information received at police station was entered in the *Rojnamcha*. PW-25 Jagdish Sharma, SHO, rushed to the spot in the company of A.S.I. Gulam Mohammad, HC Sita Ram and other police officials. He went to room No.102 and found that Sandeep Sood was lying dead with his neck half cut and several other chop wounds on various parts of his body. Thereafter he went to the residential portion of the building on the ground floor and saw the dead body of Pushpa Devi lying in a pool of blood with neck half cut and several other injuries caused by a sharp edged weapon. In the meanwhile, Satish Kumar PW-1 accompanied by PW-2 Gulab Singh and HC Krishan Chand (PW-7) also reached the hotel. PW-1 Satish Kumar made a statement, which was reduced into writing on the dictation of PW-25 Jagdish Sharma. Record of that statement is Ext. PA. It was forwarded to the Police Station for formal registration of the case. PW-25 Jagdish Sharma then conducted inquest in respect of both the dead bodies and prepared reports Exts. PB and PC. In the meanwhile, it was noticed that the car of deceased Sandeep Sood was not there and the two appellants had also disappeared. Jewellery, which was worn by deceased Pushpa Sood and the golden Kara and rings, which were worn by deceased Sandeep Sood, were also found missing. An almirah was found lying open. Container of coins kept in *puja* room was also found missing. It was suspected that the two appellants had escaped with the jewellery and other belongings of the deceased in the car of deceased Sandeep Sood. So, a red alert was sounded for intercepting the car and apprehending the appellants.

**3.** PW-25 then conducted minute inspection of the hotel and the residence of the deceased. He found jacket, Ext.P-1, lying near the dead body of Sandeep Sood. It was stained with blood. PW-1 Satish Kumar identified the jacket to be that of A-1. Sweater Ext.P-2, shirt Ext. P-3 and trousers Ext.P-4 were found near the staff room between rooms No.102 and 103 of the hotel floor of the building. These were identified to be those of A-2. Dead body of Sandeep Sood was half naked. Underwear Ext.P-5 and Pyjama Ext.P-6 were lying on one side in room No.102. Two quilt covers Exts. P-7 and P-8, two pillow covers Exts. P-9 and P-10, two bed sheets Exts.P-11 and P-12 and one telephone wire Ext. P-13 stained with blood were there in room No.102. Spanner Ext.P-15, silver ring Ext.P-16, copper ring Ext.P-17, a wrist watch Ext.P-18 and two locks of hair Exts. P-14 and P-19 were also found in room No.102. All those items were taken into possession. In the room where dead body of Pushpa Sood lay, “Darat” Ext.P-20, stained with blood and knife with broken handle Ext.P-21, also stained with blood, were found and taken into possession. A jacket Ext.P-22, a piece of towel Ext.P-23, quilt covers Ext.P-24, *Chunni* Ext.P-25, all stained with human blood, were also found in that room and were taken into possession. Two pieces of telephone wires Exts.P-28 and P-29 were seized from room No.105.

**4.** PW-4 Des Raj, one of the workers employed in the hotel, had gone on leave on 14.11.2001 on account of Diwali. He returned to the hotel on 15.11.2001 and in his presence, the police took into possession a bag Ext.P-33, a digital diary Ext.P-34 and an album Ext.P-35, all belonging to A-1, from the STD booth. Police also took into possession one foot mat Ext. P-36 from outside the room where

dead body of Pushpa Devi was lying. The foot mat was stained with blood and it had a shoe print on it.

**5.** As a result of the red alert sounded by Shimla Police, as already noticed, messages were flashed to various police stations. One of those police stations was Nahan Sadar Police Station. The WHF message was received at the said Police Station at 11.35 AM and was entered in the Rojnamcha, per entry Ext. PCC. Immediately on receipt of this message, Inspector Probationer PW-24 Bhag Mal, organized a "*Nakka*" at Dosarka. Around 1 PM, car bearing No.CH-03A-3235 reached the site of the *"Nakka*". Since the number of the car was the same as was conveyed by the Shimla police through the message, copy Ext. PCC, it was got stopped. A-1 was in the driver seat and A-2 was sitting beside him on the front seat. Clothes of both the appellants were blood stained. They were also having some injuries on their faces and hands. Both of them were apprehended. PW-24 Bhag Mal then searched their persons. On search of the person of A-1, ear tops Ext.P-49, nose pin Ext.P-50, a golden Kara Ext.P-53, golden ring Ext.P-54, necklace Ext.P-55, *Mangal Sutar* Ext.P-56, Bangle Ext.P-57, golden chain Ext.P-58, golden diamond ring Ext.P-59, silver ring Ext.P-60, golden ring without diamond Ext.P-61 and iron ring Ext.P-62, which were later on identified to belong to deceased Sandeep Sood and Pushpa Devi by PW-6 Punam, daughter of deceased Pushpa Sood, were recovered alongwith several other articles. From the search of the person of A-2, one golden coloured chain Ext.P-78, currency notes of Rs.120/- and coins of Rs.7/- were recovered. Thereafter car was searched and one multi coloured purse Ext.P-71 was recovered from the pocket of the seat of the car. It contained registration certificate Ext.P-65, insurance certificate Ext.P-

66, cheque book Ext.P-67 and pass book Ext.P-68. Purse Ext.P-69 containing currency notes of Rs.4760/- in it was recovered from the rear seat. On container Ext.P-63 containing coins weighing 6-7 kgs. was also recovered from the car.

**6.** Both the appellants were taken to Nahan hospital for their medico legal examination. PW-5 Dr. Sushil P. Vermani conducted their medical examination. He also took into possession the wearing apparels and shoes of the appellants, which had stains of blood thereon. The same consisted of shirt Ext. P-41, pants Ext.P-42, leather shoes Ext. P-43, vest Ext.P-44 and leggings Ext.P-45 of A-1 and shirt Ext.P-46, blue jeans Ext.P-47 and shoes Ext.P-48 of A-2.

**7.** Ear tops Ext.P-49, nose pin Ext.P-50 and lock of hair Ext.P-51, recovered from the car, were got preserved from PW-5 Dr. Sushil P. Vermani by PW-24 Bhag Mal, Inspector for the purpose of chemical examination. Shimla police was informed telephonically of the apprehension of the two appellants and the recovery of various items from them around 1 PM. Police party headed by PW-22 ASI Gulam Mohammad was deputed from Shimla to take the custody of the two appellants as also the articles recovered from them. When he reached a place called Sarahan, he was informed telephonically that PW-4 Bhag Mal, Inspector was on way to Shimla from Nahan and he should wait for him at Police Station, Pachhad. Around 12 in the night PW-24 Bhag Mal reached Pachhad Police Station where PW-22 ASI Gulam Mohammad from Police Station, Shimla was already present. Custody of the two appellants was handed over by PW-24 Bhag Mal, Inspector to PW-22 ASI Gulam Mohammad. Various articles recovered from the two appellants and from inside the car, which had been sealed into eleven parcels, were also handed over. PW-22 Gulam

Mohammad handed over the custody of the two appellants to PW-25 Jagdish Sharma on 16.11.2001 at Shimla. A-2 (Deep Ram) was interrogated by PW-25 Jagdish Sharma, Inspector. He made a disclosure statement that he had purchased knife Ext.P-21 from PW-9 Gurnam Singh of Lower Bazar, Shimla and "Darat" Ext.P-20, from PW-10 Nek Ram of Lakkar Bazar, Shimla. This statement was made in the presence of PW-8 Des Raj.

**8.** Eleven parcels containing various articles recovered from the appellants and the car by which they were travelling, were deposited by PW-22 SI Gulam Mohammad with Gopal Singh, MHC of Police Station Sadar, Shimla on the same day. Various blood stained articles including "Darat" and knife, which PW-25 Jagdish Sharma had seized from the spot, were also made into parcels and the parcels sealed. Those parcels were deposited with PW-19 Gopal Singh on 15.11.2001 itself. On 16.11.2001 spot was got inspected from a team of Forensic Science Laboratory. The team took photographs of the shoeprint on a mat and also inspected one *Chatai.*

**9.** Postmortem examination of the dead bodies was conducted by PW-16 Dr. H.S. Sekhon. On the dead body of Sandeep Sood, he noticed the following 25 injuries:-

1. Lacerated wound over forehead in the centre area 2x1x1/2 cms deep in size;
2. lacerated wound irregular left side of forehead 4x1x1/2 cms;
3. Chop wound 5x1x1/2 cms deep above the injury No.2 on left side;
4. Chop wound 4x1x1/2 cm. below injury No.2;
5. Two stab wounds on scalp 1/2x1/2x1 cm deep each left parietal area;

6. Chop wound 3x1x1 cm left parietal area of scalp;

7. Chop wound 2x1x1/2 cm just on the right side of injury No.6;

8. Chop wound 4x4x1/2 cm over left parieto occipital area;

9. Chop wound 3x3x1/2 cm over right parieto occipital area;

10. lacerated wound 4x4x1/2 cm over back of skull;

11. lacerated wound 4x5x bone deep over right parieto occipital area;

12. Incised wound 2x1/2 cm skin deep below left eye;

13. lacerated wound 1x1/2 cm over upper lip;

14. Chop wound 9x1x1/2 cm over left cheek below left ear;

15. Multiple small chop wound 8 in number over chin;

16. Multiple scratch abrasions over right cheek

16(b) Chop wound 14 x 3 and half x 3 cm deep on right side of neck injuring vessels and neck structures except some part of right side;

17. Chop wound involving whole of neck front and back 31x6 cms vertebra deep with cut in cervical vertebra $5^{th}$ and $6^{th}$ trachea cut, thyroid cartilage cut in the cardial vessels and nerves as well as muscles;

18. Chop wound 8x3x1 cms over left upper arm linear oblique;

19. Multiple abrasion over back of left forearm;

20. Multiple chop wound of left hand partial severing of the fingers as well as palm (defence wound);

21. Multiple chop wound of right hand partial fingers as well as the palm (defence wound);

22. multiple stab chop wound six in number in the left gluteal region

23. Multiple chop wound on right lower limb;

24. Multiple chop wound on left lower limb;

25. There was stab wound 3x3x4 cms over base of penis."

**10.** He also noticed gross contusion of scalp over back of the skull, circular depressed fracture of skull 4 cms over right parieto occipital region and extra dural bleeding over right side of brain area. He opined that the cause of death was hemorrhagic shock resulting in the ante-mortem cut throat injury and the death appeared to have occurred instantaneously with the infliction of the said injury. Probable time gap between death and postmortem was opined 24 to 36 hours. Postmortem was conducted on 16.11.2001 at 12.45 PM, per postmortem report Ext. PKK.

**11.** On the dead body of Pushpa Devi, following injuries were noticed:-

1. Contusion 4 cms x 5 cms below right eye bluish red in colour;

2. Chop wound involving front of neck and right side of neck 23 cms x 4 cms vertebra deep with cutting of trachea, thyroid cartilage C5 and C6 vertebra and vessels of the neck.

3. Both lobules of both ear cut.

4. Left alae of the nose cut (2 cm in length);

5. Chop wound 5 cms x 3 cms muscle deep over dorsum of right wrist with multiple scratches over dorsal aspect of left hand over middle finger and transverse in direction;

6. Cranium, thorax and abdomen were normal;

7. Stomach was empty. No peculiar smell."

**12.** The doctor opined that cause of death was hemorrhagic shock as a result of ante-mortem cut throat injury and the death took

place immediately after infliction of the said injury. Probable time gap between the death and the postmortem was 24 to 36 hours. Postmortem was conducted at 1.30 PM on 16.11.2001, per postmortem report Ext. PMM.

**13.** Various blood stained articles recovered from the appellants or the car they were travelling by when intercepted at Dosarka near Nahan and from the spot, were sent to the Chemical Examiner. As per report, Ext. PUU of the Chemical Examiner, jacket Ext.P-1, identified to be of A-1 by PW-1 Satish Kumar, which was recovered from room No.102, where dead body of Sandeep Sood lay, shirt and pants of A-2, pants and pyjama of A-1, which were taken into possession after their interception at Dosarka in the area of Nahan Police Station, were found to be stained with human blood of group "A". As per said report, sample blood of Sandeep Sood, which was collected from the spot, was also of group "A". On the nose pin and ear tops, recovered from A-1, human blood was noticed. Locks of hair recovered from room No.102, socks of A-1, sample of hair of A-1 and leggings of A-1, were found stained with blood. Locks of hair and flesh recovered from room No.102, hair found on jacket Ext.P-1 of A-1, hair found on sweater Ext.P-2 of A-2 tallied with the sample of hair taken from the hair of the dead body of Sandeep Sood.

**14.** On the completion of investigation, the two appellants were challaned in the Court of concerned Judicial Magistrate, who after complying with the requirements of Section 207 Cr. P.C, committed the case to the Sessions Court. After perusing the record and hearing the counsel for the appellants and the Public Prosecutor, the trial Court charged A-1 with the offences under Sections, 302, 302 read with Section 34, 379 read with Section 34, 394 read with Section 397 and

Section 342 read with Section 34 of the Indian Penal Code and A-2 with the offences, under Sections 302 read with Section 34, 379 read with Sections 34, 394 read with Section 397 and Section 342 read with Section 34 of the Indian Penal Code and on their pleading not guilty, put them on trial. On conclusion of the trial, the appellants were convicted and sentenced as aforesaid.

**15.** Trial Court has made a reference to this Court for confirmation of sentence of death imposed upon A-1, which we will hear and decide later on. In this judgment, we are dealing with the appeal of A-1 challenging his conviction (not the punishment part) and the appeal against his conviction and sentence filed by A-2. We will deal with the appeal of A-1 against the sentence part alongwith reference received from the trial Court for confirmation of penalty of death later on, after hearing the parties.

**16.** Trial Court has held that the following circumstances stand established against the appellants and these circumstances conclusively prove that it is the appellants who have committed the offences of murder, robbery and wrongful confinement:-

(a) Appellants were employed in the hotel of deceased Sandeep Sood;

(b) Appellants were present in the hotel on the morning of 15.11.2001 when the crime was committed;

(c) Appellants absconded from the hotel of the deceased in deceased's Car No.CH-03A-3235 and were intercepted at Dosarka in Nahan District at 1 P.M.;

(d) Clothes and the shoes of the appellants were stained with blood when their car was intercepted at Dosarka in Nahan District;

(e) Appellants were having injuries on their person when medically examined at Zonal Hospital, Nahan in the evening of 15.11.2001;

(f) Appellants when intercepted and apprehended at Dosarka were in possession of jewellery and other articles belonging to the deceased;

(g) Ear tops and nose pin of deceased Pushpa Devi recovered from the appellants at the time of their apprehension at Dosarka, had human blood and flesh on them, which indicated that they themselves had removed those items of jewellery from the person/dead body of Pushpa Devi;

(h) A-2 Deep Ram had purchased "Darat-20" from PW-10 Nek Ram and knife Ext.P-21 from PW-9 Gurnam Singh, 4-5 days prior to the commission of the crime;

(i) "*Darat"* Ext.P-20 and knife Ext.P-21 have been opined by PW-16 Dr. H.S. Sekhon, who conducted postmortem examination, to be the likely weapons of offence;

(j) Shoe prints found on *"Chatai*" Ext.P-26 have been opined by Forensic Science Expert, vide report Ext. PTT, to match with the shoes of the appellants;

(k) Foot mats of the car Exts. P-39 and P-40 and plastic covers of the seats of the car Exts. P-95 and P-96, had blood stains thereon;

(l) On the jacket Ext. P-1 of A-1 and pants Ext.P-4 of A-2, hair were found which matched with the sample hair of deceased Sandeep Sood.

**17.** We have perused and analyzed the evidence adduced by the prosecution and find ourselves in full agreement with the trial Court that the evidence on record conclusively proves the aforesaid circumstances.

**18.** PW-1 Satish Kumar, in no uncertain terms, testified that the appellants were employees of deceased Sandeep Sood and that on the night immediately preceding the incident and also on the morning of incident, they were present in the hotel. This part of the testimony of PW-1 Satish Kumar was not subjected to cross-examination. A-1 in his statement, under Section 313 Cr. P.C., admitted that he was employed with deceased Sandeep Sood and that he was present in the hotel on the morning of 15.11.2001 when the

crime was committed and also on the preceding night. No doubt A-2 in his statement, under Section 313 Cr. P.C, stated that he had gone to his quarter on 14.11.2001 to celebrate Diwali and was not there on the night intervening 14/15-11-2001 and came to the hotel on the morning of 15.11.2001 when the police was standing at the gate, but this plea was not suggested to any of the witnesses of the prosecution, including PW-1 Satish Kumar, in the course of their cross-examination and also this plea is falsified by the fact that he was apprehended from the stolen car of deceased Sandeep Sood alongwith A-1 at Dosarka (Nahan). The evidence with respect to this fact is being discussed in the later part of this judgment. Therefore, no fault can be found with the findings of the trial Court that the appellants were employed with deceased Sandeep Sood in his hotel and they were present in the hotel on the morning of 15.11.2001.

**19.** It stands established by the testimony of PW-24 Bhag Mal, Inspector, Police Station, Nahan, PW-17 Anil Kumar, Constable, Police Station, Nahan, PW-5 Dr. Sushil P. Vermani, Medical Officer of Zonal Hospital, Nahan, PW-13 Balbir Singh, MHC, Police Station Nahan and PW-14 Daya Ram, H.C. Police Station, Pachhad, that the appellants were apprehended at Dosarka in Nahan District when travelling by car No. CH-03A-3235 belonging to deceased Sandeep Sood and various articles of jewellery and other belongings of the two deceased were recovered from them. PW-13 Balbir Singh proved the entry, copy Ext. PCC made by him in the Rojnamcha of Police Station, Nahan, based on a WHF message received from Police Station, Shimla at 11.30 PM, per which car No. CH-03A-3235, was to be intercepted and its occupants apprehended. The witness proved another entry in the Rojnamcha, copy Ext. PDD, based on another message received from

Police Station, Sadar Shimla, per which the occupants of the car had committed offences of murder and theft etc. and had absconded in the car. PW-24 Bhag Mal, Inspector testified that on getting WHF message from Police Station, Sadar Shimla, which was entered in the Rojnamcha, vide entry copy Ext. PCC, he accompanied by PW-17 Anil Kumar, Constable and one Head Constable Satya Dev, organized "Nakka" at Dosarka and around 1 PM car bearing registration No.CH-03A-3235 reached the site of the "Nakka", which was got stopped and in the meanwhile, a second police party consisting of ASI Joginder Singh and Constable Surinder Kumar also reached. He stated that the car was being driven by A-1 while A-2 was occupying the seat adjacent to that of the driver. He stated that car was impounded and both the appellants were apprehended. He further stated that on search of the person of the appellants various articles were recovered. According to him, on search of the person of A-1 ear tops Ext.P-49, nose pin Ext.P-50, golden Kara Ext.P-53, golden ring Ext.P-54, necklace Ext.P-55, *Mangal Sutar* Ext.P-56, Bangle Ext.P-57, golden chain Ext.P-58, golden diamond ring Ext.P-59, silver ring Ext.P-60, golden ring Ext.P-61 and iron ring Ext.P-62 were recovered. He further stated that on search of the person of A-2, golden coloured chain Ext.P-78 was recovered. He also stated that on search of the car, one goggle Ext.P-77, mobile phone Ext.P-70, one Titan watch Ext.P-79, necklace of black beads Ext.P-74, another necklace Ext.P-75 and purse Ext.P-71 were recovered. He stated that purse Ext.P-71 contained insurance certificate, driving licence and visiting cards of deceased Sandeep Sood. He further stated that purse Ext.P-64 was also recovered from A-1, which contained driving licence Ext.P-80 of deceased Sandeep Sood. He further stated that pass book Ext.P-68, purse Ext.P-69

containing currency notes of Rs.4760/ -, one container containing 6-7 kgs. coins, were also recovered from the car. He also stated that two appellants were taken to the hospital for their medico legal examination and also for getting their blood stained clothes changed with the other clothes so that the blood stained clothes were seized for chemical analysis. His testimony is corroborated by PW-17 Anil Kumar, Constable, who was accompanying him. His testimony that the appellants were taken to the hospital for their medico legal examination and for getting their blood stained clothes changed with another set of clothes is corroborated by PW-5 Dr. Sushil P. Vermani, who testified that the appellants were brought to the hospital at 5.25 PM and applications Exts. PT and PV were moved for their examination. The witness further stated that A-1 was having seven injuries on his person and his wearings, i.e. shirt Ext.P-41, pants Ext.P-42, shoes Ext.P-43, vest Ext.P-44 and leggings Ext. P-45, which had stains of blood, were got removed and taken into possession. Similarly, he stated that clothes worn by A-2 i.e., shirt Ext. P-46, jeans Ext.P-47 and the pair of shoes Ext.P-48, all stained with blood, were got removed and taken into possession in his presence. He also stated that he preserved ear tops Ext.P-49, nose-pin Ext.P-50 and lock of hair Ext.P-51, which had the traces of blood and flesh, on the asking of PW-24 Bhag Mal, Inspector. The witness also proved the medico legal certificates Exts. PV and PW. He stated that the injuries noticed by him on the person of the appellants appeared to have been caused between 6 to 12 hours and the injuries could have been received by them in a scuffle or at the hands of a person defending himself against assault by the appellants.

**20.** PW-22 S.I. Gulam Mohammad stated that he was deputed to Nahan, after a message was received from Police Station, Nahan,

that the appellants had been apprehended while travelling by the car of the deceased and looted jewellery and other articles had been recovered from them, to bring them (appellants) to Shimla alongwith car and the looted property recovered from them. He further stated that when he was on way to Nahan and reached Sarahan, a constable informed him that the appellants were being brought to Police Station, Pachhad and, therefore, he should wait for them at Sarahan, the headquarters of Police Station, Pachhad. He also stated that at 11.55 P.M, Inspector Bhag Mal (PW-24) brought the appellants alongwith car and eleven sealed parcels containing the recovered property and handed over the custody of the appellants and also handed over the car and the aforesaid parcels to him and that he brought the appellants and the car and the parcels to Shimla.

**21.** The appellants do not deny that they were taken to Zonal Hospital, Nahan at 5.25 P.M. for their medical examination or that the jewellery and some other belongings of the two deceased were recovered on search of their persons and also from the search of the car, even though they deny that they were intercepted at Dosarka while travelling by the car of deceased Sandeep Sood. However, they have offered no explanation how they happened to be taken by PW-24 Bhag Mal Inspector, to Zonal Hospital, Nahan for their medico legal examination and also for the change of their clothes. The absence of explanation also corroborates the testimony of PW-24 Bhag Mal, Inspector and PW-17 Constable Anil Kumar that the two appellants were taken into custody after the car by which they were travelling, was intercepted at Dosarka. The jewellery articles, mobile phone and the coins etc., which were recovered during personal search of the appellants and the search of the car, stand identified to be of the two

deceased, by PW-6 Punam, sister of deceased Sandeep Sood and daughter of deceased Pushpa Sood. Appellants do not claim any of these items to be theirs.

**22.** The above discussed evidence fully justifies the findings of the trial Court that the appellants absconded in Car No.CH-03A-3235 belonging to deceased Sandeep Sood, the said car was intercepted at Dosarka on 15.11.2001 at 1 P.M. when both of the appellants were travelling by it, the clothes and the shoes of the appellants were stained with blood, the appellants were having injuries on their persons and the appellants were carrying with them the jewellery and other belongings of the two deceased. Appellants have offered no plausible explanation about the injuries which were found on their person nor have they offered any explanation how their clothes and shoes got stained with blood.

**23.** No doubt A-1 stated that he received the injuries when pushed by four persons whom he tried to chase because they had escaped in the car of deceased Sandeep Sood after murdering him, but this explanation is proved to be false by the above discussed evidence that the appellants tried to abscond in the car, but were intercepted and apprehended at Dosarka in Nahan District. Moreover, no suggestion was thrown to any of the witnesses of the prosecution that four persons were there on the morning on 15.11.2001 and they murdered Sandeep Sood and his mother Pushpa Sood and thereafter escaped in the car of Sandeep Sood and A-1 was pushed by them while he was trying to chase them. No explanation whatsoever has been offered by A-2 with regard to the injuries found on his person.

**24.** Testimony of PW-9 Gurnam Singh and PW-10 Nek Ram proves that A-2 (Deep Ram) had purchased the knife Ext.P-21 and

"*Darat"* Ext.P-20 from them, even though the evidence led by the prosecution with regard to the alleged disclosure statement of A-2 about his having purchased the knife and the *Darat* from the above named two witnesses, may not be relevant because the knife and the *Darat* had been recovered from the spot by the police immediately after the commission of the crime and long before the making of the alleged disclosure statement by A-2.

**25.** PW-9 Gurnam Singh very categorically stated that he had sold the knife Ext.P-21 to A-2 4-5 days before Diwali. Similarly, PW-10 Nek Ram testified that *"Darat"* Ext.P-20 had been sold by him to A-2. Both the knife Ext.P-21 and "*Darat"* Ext.P-20 were found lying on a table in the residential room of deceased Pushpa Devi, per testimony of PW-3 Sandeep Sood and PW-25 Jagdish Sharma, SHO, Police Station, Shimla. PW-16 Dr. H.S. Sekhon, who conducted postmortem of the dead bodies, testified that the chop wounds on the dead bodies could have been caused by means of "*Darat"* Ext.P-20 and the stab wound near the penis of deceased Sandeep Sood with knife Ext.P-21. Both the weapons were blood stained when seized, per testimony of PW-3 Sandeep Sood and PW-25 Jagdish Sharma, as also the report of the Chemical Examiner, Ext.PUU. PW-1 Satish Kumar has testified that he had seen this "*Darat"* Ext.P-20 in the hand of A-1 when he went to the verandah in front of the hotel rooms and at that time not only the "Darat", but also the clothes of A-1 were blood stained. There is no cogent reason to disbelieve the evidence with respect to these facts and circumstances. Hence, the findings of the trial Court that A-2 had purchased *"Darat"* Ext.P-20 from PW-10 Nek Ram and knife Ext.P-21 from PW-9 Gurnam Singh 4-5 days prior to the commission of crime and that the said "*Darat"* and the knife were used in the commission of

the crime and the same were found lying on a table in the room where the dead body of Pushpa Devi lay, call for no interference.

***26.*** Per testimony of PW-4 Des Raj and PW-25 Jagdish Sharma, *Chatai* Ext.P-36, with a shoe print in blood thereon, was found outside the room where the dead body of Pushpa Sood lay and the same was taken into possession. This *Chatai,* alongwith shoes Ext.P-48 of A-2, was sent to the Forensic Science Laboratory, Junga for opinion whether the shoeprint on the *Chatai* was from the shoes of A-2. The director, vide report Ext.PTT, opined that the shoeprint on the *Chatai,* could have been of the sole of shoes of A-2 because the print tallied with the shape, size and contours of the shoes of A-2.

***27.*** Some photographs of the shoeprints in blood found on the spot were also taken and those were also sent to the aforesaid Director alongwith shoes Ext.P-43 of A-1, to seek his opinion whether the prints in the photographs were from the shoes of A-1 and the said Director by the same report, i.e. Ext.PTT, opined that the shoeprints in the photographs were of the shoes of A-1. Shoes Ext.P-43 and Ext.P-48 are proved to be of A-1 and A-2, respectively by PW-5 Dr. Sushil P. Vermani, who has stated that the appellants were wearing these shoes and he got them removed and made them into parcels on the asking of the police when they were brought to the hospital at Nahan, in the evening of 15.11.2001. Testimony of PW-5 Dr. Sushil P Vermani, to this effect, was not subjected to cross-examination and, therefore, there should be no reason to disbelieve the same.

***28.*** The aforesaid evidence justifies the findings of the trial Court that there were prints of the shoes of the two appellants in blood on *Chatai* Ext.P-36 and also on the floor of the rooms, which shows their presence on the spot at the time of the commission of the crime.

Foot mats Exts.P-39 and P-40 and seat covers Exts. P-95 and P-96 of the car, in question, were also sent to the Chemical Examiner, who vide his report Ext.PUU, has opined that the same were stained with human blood. The appellants were found travelling by the car when it was intercepted at Dosarka, Nahan, by the police party headed by PW-24 Bhag Mal, Inspector. Appellants have offered no explanation about the presence of human blood on the foot mats and the seat covers of the car by which they were travelling. Jacket Ext.P-1 of A-1 and pants Ext.P-4 of A-2 were recovered from the spot. PW-1 Satish Kumar identified the jacket Ext.P-1 to be of A-1 and pants Ext.P-4 of A-2. To both these objects some hair were found stuck. These objects with hair stuck to them in blood were sent to the Chemical Examiner for comparison with the sample hair of deceased Sandeep Sood and the said Chemical Examiner vide report Ext. PTT opined that the hair on the jacket Ext.P-1 and pants Ext.P-4 and sample hair were of the same person. Appellant have offered no explanation how the hair of deceased Sandeep Sood were found on these two objects.

***29.*** The aforesaid circumstances, which stand established to the hilt, make a complete chain and lead to one and only one hypothesis that the appellants killed the deceased with a view to robbing them of their jewellery and other valuable articles, and to no other.

***30.*** Learned counsel for the appellants made a number of submissions to seek the reversal of the finding of conviction returned by the trial Court. We proceed to take up those submissions one by one.

***31.*** It was submitted that the testimony of PW-1 Satish Kumar did not inspire confidence and that besides being unnatural and self

contradictory, it stood contradicted by the testimony of PW-2 Gulab Singh. It was pointed out that PW-1 Satish Kumar claimed that blood stains appeared on his clothes when A-1 on seeing him in the verandah overpowered him and took him to room No.105, but according to PW-25 Jagdish Sharma, there were no blood stains on his clothes. It is true that the testimony of PW-1 Satish Kumar about the stains of blood having appeared on his clothes is contradicted by PW-25 Jagdish Sharma, but this does not make any difference. Even if the testimony of PW-1 Satish Kumar is excluded with respect to the fact of his having been overpowered and taken to room No.105 by A-1, the other circumstantial evidence, as discussed hereinabove, conclusively proves the involvement of the appellants in the commission of the crime.

***32.*** Further, it was pointed out that PW-1 Satish Kumar deposed that PW-2 Gulab Singh did not use to stay in the hotel during the night, but he (PW-2 Gulab Singh) himself admitted that he used to reside in a room near the reception in the hotel and this contradiction also makes the testimony of PW-1 Satish Kumar incredible. This contradiction is of little consequence, because the appellants do not deny that PW-1 Satish Kumar was employed by deceased Sandeep Sood and he was present in the building on the relevant date. Therefore, the testimony of PW-1 Satish Kumar with respect to his having seen A-1 with a blood stained *"Darat"* in his hand, cannot be disbelieved because his testimony that PW-2 Gulab Singh did not reside in the hotel, is contradicted by the testimony of PW-2 Gulab Singh.

***33.*** It was then submitted that PW-3 Sandeep Sood and another witness of spot inspection and seizure of various articles,

namely Yogesh Gautam, were chance witnesses being not from the locality, and, therefore, Sandeep Sood's testimony could not be believed. PW-3 Sandeep Sood has explained that deceased Sandeep Sood was his relative and when he was at his place of business in Ram Bazar, he came to know that a double murder had taken place in Oaks Land Hotel and since the hotel belonged to deceased Sandeep Sood, his relative, he rushed to the spot.

***34.*** It was then submitted that the clothes of PW-4 Des Raj, i.e. sweater, shirt and trousers were also found near the dead body of Pushpa Sood and this fact indicated the involvement of this witness in the commission of crime. The witness stated quite categorically that he was not at the hotel from the evening of 14.11.2001 to 12 noon on 15.11.2001, as he had gone to his quarter in connection with Diwali. The witness stated that he did not know who had thrown his clothes near the dead body. The testimony of the witness that he was not there from the evening of 14.11.2001 till the noon of 15.11.2001 was not subjected to cross-examination. Moreover, A-1 took a specific plea in his statement, under Section 313 of the Code of Criminal Procedure, that four persons, who had stayed in the hotel on the night preceding the day of occurrence, had committed the murder and he saw them fleeing in the car of Sandeep Sood. He does not say that PW-4 Des Raj or for that matter any other servant of the deceased was involved in the commission of the crime.

***35.*** Further, it was submitted that the evidence regarding interception of the car with the appellants therein, as led by the prosecution, was doubtful, inasmuch as neither the statement of PW-17 Constable Anil Kumar, under Section 161 Cr. P.C., had been recorded nor had the plan of the site of the interception of the car been

prepared. The submission has been noticed only to be rejected. Appellants admitted that they were taken to Zonal Hospital, Nahan, on the evening of 15.11.2001. They have not explained how did they reach Nahan that day. Therefore, the evidence of the prosecution with respect to this fact cannot be disbelieved only for the reason that statement of PW-17 constable Anil Kumar under Section 161 Cr. P.C., had not been recorded or the plan of the site where the car was intercepted, had not been prepared.

***36.*** It was also submitted that the story that the appellants were fleeing in the car was rendered doubtful by the fact that A-2 did not carry with him his clothes Exts.P-2, P-3 and P-4, even though the same were not stained with blood and similarly, A-1 did not carry with him his digital diary and other belongings, which were recovered from STD booth. The digital diary and other belongings of appellant A-1 and the clothes of A-2 were not so valuable as the jewellery and other items and the cash etc. belonging to the deceased, which the appellants fled with. Also they were in a hurry to flee, because A-1 had been noticed by PW-1 Satish Kumar with a blood stained *"Darat"* in his hand.

***37.*** It was also submitted that no independent local witness had been associated in the *"Nakka"* by Nahan police and this also created reasonable doubt about the story of interception of the car with the appellants inside it at the site of *"Nakka".* It has come in the evidence of PW-17 Anil Kumar as also PW-24 Bhag Mal, Inspector, that there is no habitation close to the site of the *"Naka"*. Also PW-24 Bhag Mal, Inspector and the police officials accompanying him, did not have enough time to go to call the local witnesses because the information with them was that the appellants had been trying to

escape from the area of H.P. after committing murder of two persons, as is clear from the entry in the Rojnamcha, copy Ext.PDD.

***38.*** It was also pointed out that according to the Investigating Officer, PW-25 Jagdish Sharma, the appellants were arrested on 16.11.2001 and this fact falsifies the story that they were intercepted and apprehended on 15.11.2001 at Dosarka. PW-25 Jagdish Sharma has stated that the appellants were formally arrested on 16.11.2001. At the same time, he has stated that they were apprehended at Dosarka on 15.11.2001 and brought to Police Station, Shimla by PW-22 Gulam Mohammad, ASI, on the night intervening 15th/16th November, 2001.

***39.*** It was also contended that *"Darat"* Ext.P-20 and knife Ext.P-21 and spanner Ext.P-15, even though stained with blood and supposed to have fingerprints thereon, were not sent to any finger print expert. The argument cannot be accepted because PW-25 Jagdish Sharma, Investigating Officer, has explained that he himself has received basic training in fingerprints comparison and he did not notice any comparable finger prints on the aforesaid objects and that is why the said objects were not sent to finger print expert.

***40.*** It was also submitted that the appellants could not have stepped out of the hotel with the soles of their shoes smeared with blood, because marks of blood were bound to appear on the road/path from the door of the hotel to the site where the car was parked and, therefore, the story of the prosecution that their shoes were stained with blood when they were allegedly intercepted at Dosarka, cannot be believed. As already noticed, A-1 had been spotted with blood stained *"Darat"* in his hand by PW-1 Satish Kumar and, therefore, the appellants did not have any time to wash their shoes. Perhaps they did

not have any other pair of shoes and, therefore, they did not change the same. Otherwise, like jacket Ext.P-1 of A-1 and pants Ext.P-4 of A-2, which were stained with blood and which they threw on the spot before fleeing, they would have changed their blood stained shoes also.

***41.*** Yet another submission made on behalf of the appellants was that story put forward by PW-1 Satish Kumar that he had been tied with telephone wire and shut in room No.105 and that he jumped from the window of the attached toilet of that room, was unnatural and unbelievable in view of the fact that there was another door in room No.105 from which the witness could have escaped and also there were no marks of tying with wire on his wrist and ankles and no stains of blood were found on his clothes, even though he claimed that when he was overpowered by A-!, stains of blood appeared on his clothes. Even if it be assumed that this part of the statement of PW-1 Satish Kumar is doubtful, there should be no reason to disbelieve his testimony about his having seen A-1 with a blood stained *"Darat"* in his hand in the verandah of that floor of the building in which deceased Sandeep Sood used to run a hotel; especially when it is not denied by the appellants that he (PW-1 Satish Kumar) was very much present in the building on the relevant date. Moreover, rest of the circumstantial evidence, unmistakably points to the two appellants being perpetrators of the crime, as held hereinabove.

**42.** It was also pointed out that application Ext.P-11, which A-1 allegedly submitted for being employed as Manager in the hotel, appeared to be fabricated, because neither it bore the name of the post of Manager nor was it addressed to deceased Sandeep Sood or to his hotel. This submission has no relevance in view of the admission by

A-1 that he was employed in the hotel and was very much present in the hotel on the morning of 15.11.2001.

**43.** Further, it was contended that Ext. PA, which had been used as FIR, was in fact a statement recorded during the course of investigation and was, therefore, hit by the bar contained in Section 162 of the Code of Criminal Procedure. It was stated that in fact the information that was conveyed to the police telephonically and which was entered in the *Rjonamcha* vide entry, copy Ext. PXX, was the FIR and that in the said information, there was no reference of deceased Sandeep Sood having already been killed by A-1 or his proceeding towards the room of deceased Pushpa Sood with blood stained *"Darat"* in his hand and that this story had been introduced later on in the statement Ext. PA, after the spot was inspected and inquest had also been conducted. In Ext. PXX what is recorded is that as per information supplied by PW-1 Satish Kumar, A-1 had been killing or beating deceased Sandeep Sood. The report is entered in vernacular. The words used are ***"HOTEL KA MANAGER US KE MALIK KO MAAR RAHA HAI"***. The words, *"Maar"* means killing and also beating. Even if the argument that it is this telephonic information which was entered in the *Rojnamcha vide Ext.PXX* is to be taken as FIR and not the statement Ext. PA, which PW-1 Satish Kumar made to PW-25 Jagdish Sharma on return to the hotel in the company of PW-7 HC Krishan Chand, that would not weaken the case of the prosecution in any manner, because as already noticed, the circumstantial evidence conclusively proves that it is the appellants and nobody else, who have perpetrated the crime.

**44.** Lastly, it was submitted that the report of the Chemical Examiner Ext. PTT does not say that the stains of blood found on the

clothes of the appellants which they were wearing at the time of their alleged interception at Dosarka in Nahan District, bore the stains of the same blood group as that of the deceased and this fact renders the prosecution story doubtful. The Chemical Examiner, vide his report Ext.PTT, opined that the stains on the clothes of the two appellants were of human blood, but the blood group could not be determined. It was for the appellants to explain how human blood appeared on their clothes. They offered no explanation. Therefore, they cannot derive any benefit on account of the Chemical Examiner's inability to determine the group of the blood found on their clothes.

**45.** In view of the above stated position, appeal filed by A-2, namely Deep Ram, is dismissed in its totality and the appeal filed by A-1, namely Reddy Shyamal Rao @ Akash, is dismissed partly so far as it assails his conviction for the offences under Sections 302, 302 read with Section 34 and Section 394 read with Section 397 of the Indian Penal Code. His conviction and sentence for the offence under Section 342 read with Section 34 of the Indian Penal Code are set aside for want of sufficient evidence. His appeal against the sentence part of the judgment of the trial Court shall be heard and disposed of alongwith reference of confirmation of death penalty made by the Sessions Court.

**( Surjit Singh ), J**

**October 12, 2007**(ss) **( Surinder Singh ), J**